

## A comparison of the U.S. and Montana Constitutions

The genesis of the "takings" concept is found in the Fifth Amendment of the U.S. Constitution and Article II, Section 29 of the Montana Constitution.

A pertinent portion of the Just Compensation Clause of the Fifth Amendment of the U.S. Constitution reads as follows:

*" . . . nor shall private property be taken for public use, without just compensation."*

Article II, Section 29 of the Montana Constitution contains a similar clause:

*"Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner."*

Note that the Montana Constitution adds "or damaged" to the language in the U.S. Constitution. At this time a majority of the Montana Supreme Court has acknowledged this difference, but continues to use U.S. Supreme Court decisions as guidance for what is and is not a taking under the Montana Constitution.